

House \_\_\_\_\_ Amendment  
NO. \_\_\_\_\_

**Offered By**

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1 AMEND House Committee Substitute for House Bill No. 345, Page 1, Section A, Line 3, by  
2 inserting after all of said line the following:

3  
4 "67.1830. As used in sections 67.1830 to 67.1846, the following terms shall mean:

5 (1) "Abandoned equipment or facilities", any equipment materials, apparatuses, devices  
6 or facilities that are:

7 (a) Declared abandoned by the owner of such equipment or facilities;

8 (b) No longer in active use, physically disconnected from a portion of the operating  
9 facility or any other facility that is in use or in service, and no longer capable of being used for  
10 the same or similar purpose for which the equipment, apparatuses or facilities were installed; or

11 (c) No longer in active use and the owner of such equipment or facilities fails to respond  
12 within thirty days to a written notice sent by a political subdivision;

13 (2) "Degradation", the actual or deemed reduction in the useful life of the public  
14 right-of-way resulting from the cutting, excavation or restoration of the public right-of-way;

15 (3) "Emergency", includes but is not limited to the following:

16 (a) An unexpected or unplanned outage, cut, rupture, leak or any other failure of a public  
17 utility facility that prevents or significantly jeopardizes the ability of a public utility to provide  
18 service to customers;

19 (b) An unexpected or unplanned outage, cut, rupture, leak or any other failure of a public  
20 utility facility that results or could result in danger to the public or a material delay or hindrance  
21 to the provision of service to the public if the outage, cut, rupture, leak or any other such failure  
22 of public utility facilities is not immediately repaired, controlled, stabilized or rectified; or

23 (c) Any occurrence involving a public utility facility that

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1 a reasonable person could conclude under the circumstances that immediate and undelayed action by  
2 the public utility is necessary and warranted;

3 (4) "Excavation", any act by which earth, asphalt, concrete, sand, gravel, rock or any other  
4 material in or on the ground is cut into, dug, uncovered, removed, or otherwise displaced, by means  
5 of any tools, equipment or explosives, except that the following shall not be deemed excavation:

6 (a) Any de minimis displacement or movement of ground caused by pedestrian or vehicular  
7 traffic;

8 (b) The replacement of utility poles and related equipment at the existing general location  
9 that does not involve either a street or sidewalk cut; or

10 (c) Any other activity which does not disturb or displace surface conditions of the earth,  
11 asphalt, concrete, sand, gravel, rock or any other material in or on the ground;

12 (5) "Management costs" or "rights-of-way management costs", the actual costs a political  
13 subdivision reasonably incurs in managing its public rights-of-way, including such costs, if incurred,  
14 as those associated with the following:

15 (a) Issuing, processing and verifying right-of-way permit applications;

16 (b) Inspecting job sites and restoration projects;

17 (c) Protecting or moving public utility right-of-way user construction equipment after  
18 reasonable notification to the public utility right-of-way user during public right-of-way work;

19 (d) Determining the adequacy of public right-of-way restoration;

20 (e) Restoring work inadequately performed after providing notice and the opportunity to  
21 correct the work; and

22 (f) Revoking right-of-way permits.  
23

24 Right-of-way management costs shall be the same for all entities doing similar work. Management  
25 costs or rights-of-way management costs shall not include payment by a public utility right-of-way  
26 user for the use or rent of the public right-of-way, degradation of the public right-of-way or any costs  
27 as outlined in paragraphs (a) to (h) of this subdivision which are incurred by the political subdivision  
28 as a result of use by users other than public utilities, the attorneys' fees and cost of litigation relating  
29 to the interpretation of this section or section 67.1832, or litigation, interpretation or development of  
30 any ordinance enacted pursuant to this section or section 67.1832, or attorneys' fees and costs in  
31 connection with issuing, processing, or verifying right-of-way permit or other applications or

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1 agreements, or the political subdivision's fees and costs related to appeals taken pursuant to section  
 2 67.1838. In granting or renewing a franchise for a cable television system, a political subdivision  
 3 may impose a franchise fee and other terms and conditions permitted by federal law;

4 (6) "Managing the public right-of-way", the actions a political subdivision takes, through  
 5 reasonable exercise of its police powers, to impose rights, duties and obligations on all users of the  
 6 right-of-way, including the political subdivision, in a reasonable, competitively neutral and  
 7 nondiscriminatory and uniform manner, reflecting the distinct engineering, construction, operation,  
 8 maintenance and public work and safety requirements applicable to the various users of the public  
 9 right-of-way, provided that such rights, duties and obligations shall not conflict with any federal law  
 10 or regulation. In managing the public right-of-way, a political subdivision may:

11 (a) Require construction performance bonds or insurance coverage or demonstration of  
 12 self-insurance at the option of the political subdivision or if the public utility right-of-way user has  
 13 twenty-five million dollars in net assets and does not have a history of permitting noncompliance  
 14 within the political subdivision as defined by the political subdivision, then the public utility  
 15 right-of-way user shall not be required to provide such bonds or insurance;

16 (b) Establish coordination and timing requirements that do not impose a barrier to entry;

17 (c) Require public utility right-of-way users to submit, for right-of-way projects commenced  
 18 after August 28, 2001, requiring excavation within the public right-of-way, whether initiated by a  
 19 political subdivision or any public utility right-of-way user, project data in the form maintained by  
 20 the user and in a reasonable time after receipt of the request based on the amount of data requested;

21 (d) Establish right-of-way permitting requirements for street excavation;

22 (e) Establish removal requirements for abandoned equipment or facilities, if the existence of  
 23 such facilities prevents or significantly impairs right-of-way use, repair, excavation or construction;

24 (f) Establish permitting requirements for towers and other structures or equipment for  
 25 wireless communications facilities in the public right-of-way, notwithstanding the provisions of  
 26 section 67.1832;

27 (g) Establish standards for street restoration in order to lessen the impact of degradation to  
 28 the public right-of-way; and

29 (h) Impose permit conditions to protect public safety;

30 (7) "Political subdivision", a city, town, village, county of the first classification or county of  
 31 the second classification;

32 (8) "Public right-of-way", the area on, below or above a public roadway, highway, street or  
 33 alleyway in which the political subdivision has an ownership interest, but not including:

34 (a) The airwaves above a public right-of-way with regard to cellular or other nonwire  
 35 telecommunications or broadcast service;

36 (b) Easements obtained by utilities or private easements in platted subdivisions or tracts;

37 (c) Railroad rights-of-way and ground utilized or acquired for railroad facilities; or

38 (d) [Poles,] Pipes, cables, conduits, wires, optical cables, or other means of transmission,  
 39 collection or exchange of communications, information, substances, data, or electronic or electrical  
 40 current or impulses utilized by a municipally owned or operated utility pursuant to chapter 91 or  
 41 pursuant to a charter form of government;

(9) "Public utility", every cable television service provider, every pipeline corporation, gas corporation, electrical corporation, rural electric cooperative, telecommunications company, water corporation, heating or refrigerating corporation or sewer corporation under the jurisdiction of the public service commission; every municipally owned or operated utility pursuant to chapter 91 or pursuant to a charter form of government or cooperatively owned or operated utility pursuant to chapter 394; every street light maintenance district; every privately owned utility; and every other entity, regardless of its form of organization or governance, whether for profit or not, which in providing a public utility type of service for members of the general public, utilizes pipes, cables, conduits, wires, optical cables, or other means of transmission, collection or exchange of communications, information, substances, data, or electronic or electrical current or impulses, in the collection, exchange or dissemination of its product or services through the public rights-of-way;

(10) "Public utility right-of-way user", a public utility owning or controlling a facility in the public right-of-way; and

(11) "Right-of-way permit", a permit issued by a political subdivision authorizing the performance of excavation work in a public right-of-way.

67.1836. 1. A political subdivision may deny an application for a right-of-way permit if:

(1) The public utility right-of-way user fails to provide all the necessary information requested by the political subdivision for managing the public right-of-way;

(2) The public utility right-of-way user has failed to return the public right-of-way to its previous condition under a previous permit;

(3) The political subdivision has provided the public utility right-of-way user with a reasonable, competitively neutral, and nondiscriminatory justification for requiring an alternative method for performing the work identified in the permit application or a reasonable alternative route that will result in neither additional installation expense up to ten percent to the public utility right-of-way user nor a declination of service quality;

(4) The political subdivision determines that the denial is necessary to protect the public health and safety, provided that the authority of the political subdivision does not extend to those items under the jurisdiction of the public service commission, such denial shall not interfere with a public utility's right of eminent domain of private property, and such denials shall only be imposed on a competitively neutral and nondiscriminatory basis; or

(5) The area is environmentally sensitive as defined by state statute or federal law or is a historic district as defined by local ordinance.

2. A political subdivision may, after reasonable notice and an opportunity to cure, revoke a right-of-way permit granted to a public utility right-of-way user, with or without fee refund, and/or impose a penalty as established by the political subdivision until the breach is cured, but only in the event of a substantial breach of the terms and material conditions of the permit. A substantial breach by a permittee includes but is not limited to:

(1) A material violation of a provision of the right-of-way permit;

(2) An evasion or attempt to evade any material provision of the right-of-way permit, or the perpetration or attempt to perpetrate any fraud or deceit upon the political subdivision or its citizens;

(3) A material misrepresentation of fact in the right-of-way permit application;

1 (4) A failure to complete work by the date specified in the right-of-way permit, unless a  
 2 permit extension is obtained or unless the failure to complete the work is due to reasons beyond the  
 3 permittee's control; and

4 (5) A failure to correct, within the time specified by the political subdivision, work that does  
 5 not conform to applicable national safety codes, industry construction standards, or local safety  
 6 codes that are no more stringent than national safety codes, upon inspection and notification by the  
 7 political subdivision of the faulty condition.

8 3. Any political subdivision that requires public utility right-of-way users to obtain a  
 9 right-of-way permit, except in an emergency, prior to performing excavation work within a public  
 10 right-of-way shall promptly, but not longer than thirty-one days, process all completed permit  
 11 applications. If a political subdivision fails to act on an application for a right-of-way permit within  
 12 thirty-one days, the application shall be deemed approved. In order to avoid excessive processing  
 13 and accounting costs to either the political subdivision or the public utility right-of-way user, the  
 14 political subdivision may establish procedures for bulk processing of permits and periodic payment  
 15 of permit fees.

16 67.1838. [1.] A public utility right-of-way user that has been denied a right-of-way permit,  
 17 has had its right-of-way permit revoked, believes that the fees imposed on the public right-of-way  
 18 user by the political subdivision do not conform to the requirements of section 67.1840, believes the  
 19 political subdivision has violated any provision of sections 67.1830 to 67.1848, or asserts any other  
 20 issues related to the use of the public right-of-way, [shall have, upon written request, such denials,  
 21 revocations, fee impositions, or other disputes reviewed by the governing body of the political  
 22 subdivision or an entity assigned by the governing body for this purpose. The governing body of the  
 23 political subdivision or its delegated entity shall specify, in its permit processing schedules, the  
 24 maximum number of days by which the review request shall be filed in order to be reviewed by the  
 25 governing body of the political subdivision or its delegated entity. A decision affirming the denial,  
 26 revocation, fee imposition or dispute resolution shall be in writing and supported by written findings  
 27 establishing the reasonableness of the decision.

28 2. Upon affirmation by the governing body of the denial, revocation, fee imposition or  
 29 dispute resolution, the public utility right-of-way user may, in addition to all other remedies and if  
 30 both parties agree, have the right to have the matter resolved by mediation or binding arbitration.  
 31 Binding arbitration shall be before an arbitrator agreed to by both the political subdivision and the  
 32 public utility right-of-way user. The costs and fees of a single arbitrator shall be borne equally by the  
 33 political subdivision and the public utility right-of-way user.

34 3. If the parties cannot agree on an arbitrator, the matter shall be resolved by a three-person  
 35 arbitration panel consisting of one arbitrator selected by the political subdivision, one arbitrator  
 36 selected by the public utility right-of-way user, and one person selected by the other two arbitrators.  
 37 In the event that a three-person arbitrator panel is necessary, each party shall bear the expense of its  
 38 own arbitrator and shall jointly and equally bear with the other party the expense of the third  
 39 arbitrator and of the arbitration.

40 4. Each party to the arbitration shall pay its own costs, disbursements and attorney fees] may  
 41 bring an action for review in any court of competent jurisdiction. The court shall rule on any such

1 petition for review within forty-five days of service. The petition for review shall be deemed granted  
 2 if the court fails to rule within the forty-five-day time period.

3 67.1842. 1. In managing the public right-of-way and in imposing fees pursuant to sections  
 4 67.1830 to 67.1846, no political subdivision shall:

5 (1) Unlawfully discriminate among public utility right-of-way users;

6 (2) Grant a preference to any public utility right-of-way user;

7 (3) Create or erect any unreasonable requirement for entry to the public right-of-way by  
 8 public utility right-of-way users;

9 (4) Require a telecommunications company to obtain a franchise or require a public utility  
 10 right-of-way user to pay for the use of the public right-of-way, except as provided in sections  
 11 67.1830 to 67.1846; [or]

12 (5) Enter into a contract or any other agreement for providing for an exclusive use,  
 13 occupancy or access to any public right-of-way; or

14 (6) Require any public utility that has legally been granted access to the political  
 15 subdivision's right-of-way prior to August 28, 2001, to enter into an agreement or obtain a permit for  
 16 general access to or the right to remain in the right-of-way of the political subdivision.

17 2. A public utility right-of-way user shall not be required to apply for or obtain right-of-way  
 18 permits for projects commenced prior to August 28, 2001, requiring excavation within the public  
 19 right-of-way, for which the user has obtained the required consent of the political subdivision, or that  
 20 are otherwise lawfully occupying or performing work within the public right-of-way. The public  
 21 utility right-of-way user may be required to obtain right-of-way permits prior to any excavation work  
 22 performed within the public right-of-way after August 28, 2001.

23 3. A political subdivision shall not collect a fee imposed pursuant to section 67.1840 through  
 24 the provision of in-kind services by a public utility right-of-way user, nor require the provision of  
 25 in-kind services as a condition of consent to use the political subdivision's public right-of-way;  
 26 however, nothing in this subsection shall preclude requiring services of a cable television operator,  
 27 open video system provider or other video programming provider as permitted by federal law."; and  
 28

29 Further amend said bill, Page 2, Section 67.5092, Line 17, by inserting after the word "law"  
 30 the words "and acting in its capacity"; and  
 31

32 Further amend said bill, Page 2, Section 67.5092, Line 18, by deleting the words "wireless  
 33 facilities and wireless support structures" and inserting in lieu thereof the words "zoning or building  
 34 permit review of an application"; and  
 35

36 Further amend said bill, Page 2, Section 67.5092, Line 42, by inserting after the word  
 37 "codes," the words "National Electric Safety Codes, and recognized industry standards for structural  
 38 safety, capacity, reliability, and engineering,"; and  
 39

40 Further amend said bill, Page 3, Section 67.5092, Line 65, by inserting after the word  
 41 "county," the words "municipality acting in its capacity as a utility, municipal utility board"; and

Further amend said bill, Page 3, Section 67.5092, Line 66, by inserting after the word "electric," the words "natural gas, water, waste water,"; and

Further amend said bill, Page 3, Section 67.5092, Line 67, by inserting after the word "telecommunications" the words "or internet protocol-related"; and

Further amend said bill, Page 3, Section 67.5092, Lines 74 to 80, by deleting all of said lines and inserting in lieu thereof the following:

"(17) "Wireless facility", the set of equipment and network components, exclusive of the underlying wireless support structure, including, but not limited to, antennas, accessory equipment, transmitters, receivers, power supplies, cabling and associated equipment necessary to provide wireless communications services;

(18) "Wireless support structure", a structure, such as a monopole, tower, or building capable of supporting wireless facilities. This definition does not include utility poles."; and

Further amend said bill, Page 4, Section 67.5094, Line 17, by deleting "FCC's" and inserting in lieu thereof "Federal Communication Commission's"; and

Further amend said bill, Page 5, Section 67.5094, Line 56, by deleting the word "unreasonable"; and

Further amend said bill, Page 5, Section 67.5094, Line 59, by inserting after the word "facilities" the words "if such regulations or obligations are unreasonable"; and

Further amend said bill, Page 6, Section 67.5096, Line 3, by deleting the words "this act" and inserting in lieu thereof "sections 67.5090 to 67.5104"; and

Further amend said bill, Page 6, Section 67.5096, Line 4, by deleting the word "hereof"; and

Further amend said bill, Page 6, Section 67.5096, Line 7, by deleting the words "this act" and inserting in lieu thereof "sections 67.5090 to 67.5104"; and

Further amend said bill, Page 6, Section 67.5096, Line 9, by deleting all of said line and inserting in lieu thereof the following: "appropriate authority. Each application shall include a copy of a lease, letter of authorization or other agreement from the property owner evidencing applicant's right to pursue the application; and"; and

Further amend said bill, Page 6, Section 67.5096, Lines 13 and 14, by deleting all of said lines and inserting in lieu thereof the following: "including but not limited to documents and electronic data, shall be subject to chapter 610."; and

1  
2 Further amend said bill, Page 6, Section 67.5096, Line 15, by deleting the words "one  
3 hundred fifty" and inserting in lieu thereof the word "ninety"; and  
4

5 Further amend said bill, Page 6, Section 67.5096, Line 25, by deleting the words "one  
6 hundred fifty" and inserting in lieu thereof the word "ninety"; and  
7

8 Further amend said bill, Page 6, Section 67.5096, Line 27, by deleting the words "one  
9 hundred fifty" and inserting in lieu thereof the word "ninety"; and  
10

11 Further amend said bill, Page 6, Section 67.5096, Line 32, by deleting the words "one  
12 hundred fifty" and inserting in lieu thereof the word "ninety"; and  
13

14 Further amend said bill, Page 7, Section 67.5098, Lines 3 and 4, by deleting all of said lines  
15 and inserting in lieu thereof the following: "substantial modifications of wireless support structures,  
16 subject to the provisions of sections 67.5090 to 67.5104, including without limitation section  
17 67.5094, and subject to federal law."; and  
18

19 Further amend said bill, Page 7, Section 67.5098, Line 9, by deleting all of said line and  
20 inserting in lieu thereof the following: "appropriate authority. Each application shall include a copy  
21 of a lease, letter of authorization or other agreement from the property owner evidencing applicant's  
22 right to pursue the application; and"; and  
23

24 Further amend said bill, Page 7, Section 67.5098, Lines 13 and 14, by deleting all of said  
25 lines and inserting in lieu thereof the following: "including but not limited to documents and  
26 electronic data, shall be subject to chapter 610."; and  
27

28 Further amend said bill, Page 8, Section 67.5100, Line 1, by deleting the words "this act,"  
29 and inserting in lieu thereof "sections 67.5090 to 67.5104, including section 67.5094,"; and  
30

31 Further amend said bill, Page 8, Section 67.5100, Line 3, by inserting after the word  
32 "requirements," the words "National Electric Safety Codes, and recognized industry standards for  
33 structural safety, capacity, reliability, and engineering,"; and  
34

35 Further amend said bill, Page 8, Section 67.5100, Line 7, by inserting after the word  
36 "application" the words "or application for replacement of wireless facilities"; and  
37

38 Further amend said bill, Page 8, Section 67.5100, Line 10, by deleting the words "this act"  
39 and inserting in lieu thereof "sections 67.5090 to 67.5104"; and  
40

41 Further amend said bill, Page 8, Section 67.5100, Line 13, by inserting after the word

1 "complete." the following: "Each collocation application or application to replace wireless facilities  
 2 shall include a copy of a lease, letter of authorization or other agreement from the property owner  
 3 evidencing applicant's right to pursue the application."; and

4  
 5 Further amend said bill, Page 8, Section 67.5100, Line 22, by deleting the word "facilities"  
 6 and inserting in lieu thereof the word "facilities"; and

7  
 8 Further amend said bill, Page 8, Section 67.5100, Line 27, by deleting all of said line and  
 9 inserting in lieu thereof the following:

10 "4. Except as provided in section 67.5104, the provisions of sections 67.5090 to 67.5104  
 11 shall not:"; and

12  
 13 Further amend said bill, Page 8, Section 67.5100, Line 28, by deleting "(a)" and inserting in  
 14 lieu thereof "(1)"; and

15  
 16 Further amend said bill, Page 8, Section 67.5100, Line 30, by deleting all of said line and  
 17 inserting in lieu thereof the following: "wireless facility on new, existing, or replacement poles  
 18 owned or operated by a utility;"; and

19  
 20 Further amend said bill, Page 8, Section 67.5100, Line 31, by deleting all of said line and  
 21 inserting in lieu thereof the following:

22 "(2) Expand the power of an authority to regulate any utility; or

23 (3) Restrict any utility's rights or authority, or negate any utility's agreement, regarding  
 24 requested access to, or the rates and terms applicable to placement of any wireless facility on new,  
 25 existing, or replacement poles, structures, or existing structures owned or operated by a utility."; and

26  
 27 Further amend said bill, Page 9, Section 67.5102, Line 5, by deleting all of said line and  
 28 inserting in lieu thereof the following: "wireless support structures, or collocations if such  
 29 moratorium exceeds six months in length and if the legislative act establishing it fails to state  
 30 reasonable grounds and good cause for such moratorium. No such moratorium shall affect an  
 31 already pending application;"; and

32  
 33 Further amend said bill, Page 9, Section 67.5102, Line 14, by inserting after the word  
 34 "appraisers" the words "licensed under chapter 339"; and

35  
 36 Further amend said bill, Page 9, Section 67.5102, Line 22, by deleting the words "one  
 37 hundred fifty" and inserting in lieu thereof the word "ninety"; and

38  
 39 Further amend said bill, Page 9, Section 67.5102, Line 31, by deleting "." and inserting in  
 40 lieu thereof "₌"; and

1 Further amend said bill, Page 9, Section 67.5102, Line 35, by inserting after all of said line  
2 the following:

3 "67.5103. Notwithstanding any provision of sections 67.5090 to 67.5102, nothing herein  
4 shall provide any applicant the power of eminent domain or the right to compel any private or public  
5 property owner, or the department of conservation or department of natural resources to:

6 (1) Lease or sell property for the construction of a new wireless support structure; or

7 (2) Locate or cause the collocation of a wireless facility on any existing structure or wireless  
8 support structure."; and  
9

10 Further amend said bill, Page 9, Section 67.5104, Lines 1 to 3, by deleting all of said lines  
11 and inserting in lieu thereof the following:

12 "67.5104. Any pole attachment rates, terms, and conditions, including those related to the  
13 granting or denial of access, demanded by a municipal utility pole owner or controlling authority of a  
14 municipality shall be nondiscriminatory, just and reasonable and shall not be subject to any required  
15 franchise authority or government entity permitting. An annual pole attachment rental rate shall be  
16 calculated on a per pole basis and shall be considered just and reasonable"; and  
17

18 Further amend said bill, Page 10, Section 67.5104, Line 6, by deleting the word "any" and  
19 inserting in lieu thereof the word "an"; and  
20

21 Further amend said bill, Page 10, Section 67.5104, Line 7, by deleting all of said line and  
22 inserting in lieu thereof the following: "provider, or by a telecommunications, wireless  
23 communications or other communications-related service provider or municipal utility pole owner,  
24 to a pole. A service provider may seek review of any rate, term, or"; and  
25

26 Further amend said bill, Page 10, Section 67.5104, Line 8 by deleting the word "district" and  
27 inserting in lieu thereof the word "circuit"; and  
28

29 Further amend said bill, Page 10, Section 67.5104, Line 8, by inserting after the word "court"  
30 the following: "if that entity believes the rates, terms, and conditions are not fair, just, and  
31 reasonable"; and  
32

33 Further amend said bill by amending the title, enacting clause, and intersectional references  
34 accordingly.